

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GERROD HERNDON,

Plaintiff,

v.

SAN JOSE BEHAVIORAL HEALTH,

Defendant(s).

Case No. [22-cv-01020-CRB](#) (PR)

ORDER OF DISMISSAL

(ECF No. 2)

Plaintiff, a former state prisoner currently at All Saints Extended Care, an assisted living facility in San Rafael, California, has filed a pro se complaint for damages under 42 U.S.C. § 1983 using the court's prisoner complaint form wherein he alleges that "staff" and "administr[at]ion" at San Jose Behavioral Health Hospital "stole my stuff from my room." ECF No. 1 at 2. Plaintiff also seeks leave to proceed in forma pauperis (IFP) under 28 U.S.C. § 1915 which, based solely on his affidavit of poverty, is GRANTED.


Plaintiff's § 1983 action for damages against San Jose Behavioral Health Hospital staff and administration for unlawful deprivation of property must be DISMISSED pursuant to § 1915(e)(2) for failure to state a claim. First, it is well established that private entities and individuals do not act under color of state law, an essential element of a § 1983 action. See Gomez v. Toledo, 446 U.S. 635, 640 (1980). Purely private conduct is not actionable under § 1983. See Van Ort v. Estate of Stanewich, 92 F.3d 831, 835 (9th Cir. 1996); Ouzts v. Maryland Nat'l Ins. Co., 505 F.2d 547, 550 (9th Cir. 1974). Second, it is also well established that a negligent or intentional deprivation of property by a state actor fails to state a due process claim under § 1983 if the state has an adequate post-deprivation remedy and California Law provides such an adequate post-deprivation remedy for deprivations of property by state actors. See Barnett v. Centoni, 31 F.3d 813, 816-17 (9th Cir. 1994) (citing Cal. Gov't Code §§ 810-895).

1 Plaintiff appears to suggest additional unlawful deprivations of property (and other
2 wrongdoing) by the Marin County Sheriff and the San Rafael and Novato police departments. But
3 any such additional claims of unlawful deprivation of property (or other wrongdoing) against these
4 different (and unnamed) defendants must be brought in a separate action. See George v. Smith,
5 507 F.3d 605, 607 (7th Cir. 2007) (unrelated claims against different defendants belong in
6 different suits).

7 The clerk is instructed to close the case and terminate plaintiff's motion for leave to
8 proceed IFP (which the court grants above) appearing on ECF as item number 2.

9 **IT IS SO ORDERED.**

10 Dated: April 21, 2022



11 CHARLES R. BREYER
12 United States District Judge
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